



INTERIOR BOARD OF INDIAN APPEALS

Miami Tribe of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs

27 IBIA 153 (02/02/1995)

Denying reconsideration of:
27 IBIA 123



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

MIAMI TRIBE OF OKLAHOMA,	:	Order Denying Reconsideration
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-180-A
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 2, 1995

On January 10, 1995, the Board summarily affirmed a July 28, 1994, decision of the Muskogee Area Director, Bureau of Indian Affairs, declining to acquire a 0.50-acre tract of land in Bowie County, Texas, in trust for the Miami Tribe of Oklahoma. 27 IBIA 123. The Board found that appellant had failed to carry its burden of showing error in the Area Director's decision because its notice of appeal, the only filing the Board received from appellant, made only the most general allegations of error.

Appellant has filed a petition for reconsideration, stating that it had prepared and timely mailed a brief to the Board. It states further: "The copy for your office was, in error, mailed by regular U.S. Mail. The copies for all other mailings were sent Certified U.S. Mail, Return Receipt Requested." Appellant furnishes a copy of the brief, as well as copies of receipts for certified mail, showing service on the Area Director, the Miami Agency Superintendent, the Tulsa Field Solicitor, and an attorney in Ponca City, Oklahoma, on various dates between November 4 and November 8, 1994.

In American Land Development Corp. v. Acting Phoenix Area Director, 25 IBIA 120, recon. denied, 25 IBIA 197 (1994), the Board considered a similar contention concerning a notice of appeal which had not been received by the Board. The appellant in that case contended, inter alia, that it had mailed the Board's copy of its notice of appeal by regular mail and all other copies by certified mail. The Board dismissed the appeal as untimely, finding that the appellant had failed to meet its burden of showing that the notice of appeal had been timely mailed or delivered to the Board.

Here also, appellant's contention that it mailed the brief to the Board by regular mail is insufficient to show that the brief was timely filed. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, appellant's petition for reconsideration is denied.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge